

ORIGINAL

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IN PRO SE APPELLANT

FILED IN THE
UNITED STATES DISTRICT COURT
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ABRAHAM NGUYEN MARTIN,) CV. NO. 06-00629 DAE-LEK
Appellant,) CR. NO. 04-00322 DAE
vs.) CV. NO. 06-00632 DAE-LEK
UNITED STATES OF AMERICA,) CR. NO. 05-00049 DAE
Appellee.) NINTH CIRCUIT CASE 07-16756
) MOTION FOR RULING ON THE
) COA APPLICATION TO BRING THE
) APPEAL TO NINTH CIRCUIT;
) CERTIFICATE OF SERVICE

MOTION FOR RULING ON THE COA APPLICATION

COMES NOW, Abraham Nguyen Martin, hereinafter "Martin", appellant in propria persona in the above-mentioned civil action, and hereby respectfully submits, in good faith, to this Honorable Court his Motion for Ruling on the COA application to bring the Appeal to the Court of Appeals for the Ninth Circuit, from the denial of Martin's habeas corpus petition, Title 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence for a Person in Federal Custody, filed on August 16, 2007.

This motion is based on Title 28 U.S.C. § 2253(c), FRAP 22(b), Circuit Rule 22-1, files and records of this instant case, and the following reasons:

THE CERTIFICATE OF APPEALABILITY ISSUE

1. Congress has vested absolute power in the district courts to allow habeas appeals by granting the certificate in the first instance. See **Nowakowski v. Maroney**, 1967, 386 U.S. 542, 87 S.Ct. 1197, 18 L.Ed.2d 282.
2. Appellant Martin has paid due respect and in good faith to the District Court in this regard. He filed the Motion for COA on September 20, 2007, which was followed by a Supplement on September 25, 2007, to the District Court, District of Hawaii.
3. Appellant has made substantial showing of violations of constitutional rights, under the standard set forth in **Slack v. McDaniel**, 529 U.S. 473, 146 L.Ed.2d 542, 120 S.Ct. 1595. See also **United States v. Martin**, 226 F.3d 1042, 1046 (9th Cir. 2000), cert. denied, 532 U.S. 1002 (2001).
4. Title 28 U.S.C. § 2253 and FRAP Rule 22(b) empower the court of appeals to rule on a request for a COA when the district court has not done so.
5. Title 28 U.S.C. § 2253 n.15 clearly states: "Where District Court failed to act upon application for certificate of probable cause for period in excess of 90 days, Court of Appeals deemed application to have been denied and considered notice of appeal to constitute request for certificate of probable cause addressed to judges of Court of Appeals." **Lara v. Nelson** (1971, CA9 Cal) 449 F.2d 323.
6. The 90-day limitation in the case at bar will end on or about December 19, 2007, calculated from the filing date of 09/20/2007.

7. "The word 'judge' in § 2253(c)(1) includes not only a circuit judge but also a district judge. That is, both circuit and district judges have the authority under § 2253(c)(1) to grant COAs. See **Valerio v. Crawford**, 306 F.3d 742, 763-65 (9th Cir. 2003)(en banc). cert. denied, sub nom **McDaniel v. Valerio**, 538 U.S. 994 (2003).

8. From a different view, the Seventh Circuit said that district judges may issue certificates of appealability ...[does not mean that] the statute makes initial resort to the district court essential. True, Circuit Rule 22(b) instructs litigants to go to district courts first, and initial application to the district judge is good practice But a court of appeals is entitled to make exceptions to its norms **Williams v. US**. 150 F3d 639-41.

CONCLUSION

For the above-stated reasons, Appellant Martin moves this Honorable Court to make a ruling on his motion for a COA, or in the alternative, to reconsider the denial of his motion 2255 and grant him the sought-after relief, or any other relief this Honorable Court deems just and proper, for the interests of justice and fairness to the Appellant.

DATED: Lompoc, California this December 6th, 2007

Respectfully submitted,



Abraham Martin
In Pro Se Appellant

CERTIFICATE OF SERVICE

Case name: USA V. MARTIN

Case No. 07-16756 Court of Appeals for the Ninth Circuit

Hawaii District Court CV No. 06-00629DAE-LEK/CR.Nc. 04-00322DAE

I certify that a copy of the **Motion for Ruling on the COA Application**

and any attachment(s) was served, either in person or by mail,
on the person(s) listed below:

DATED: Lompoc, California 12/06/2007



Abraham Martin

<u>Name</u>	<u>Address</u>	<u>Date Served</u>
William L. Shipley AUSA	300 Ala Moana Blvd. Rm 6-100 Honolulu, HI 96850	12/06/2007
Clerk Court of Appeals Ninth Circuit	95 Seventh Street P.O. Box 193939 San Francisco, CA 94119-3939	12/06/2007